

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JESSICA ZARETZKE, an individual,

Plaintiff,

vs.

THE BOEING COMPANY,  
a Washington company,

Defendant.

Case No. 2:17-cv-00971-JLR

**REPLY OF DEFENDANT THE BOEING  
COMPANY IN SUPPORT OF MOTION  
TO ENFORCE SETTLEMENT  
AGREEMENT**

**NOTE ON MOTION CALENDAR:  
SEPTEMBER 14, 2018**

**ORAL ARGUMENT REQUESTED**

1 Plaintiff Jessica Zaretzke's ("Plaintiff") Response to Defendant the Boeing Company's  
2 ("Boeing") Motion to Enforce Settlement Agreement demonstrates the need for the Court to  
3 issue an order stating that Boeing will not be held liable to Plaintiff, Mercer Island Law Group,  
4 PLLC, or Skidmore & Fomina, PLLC, for any attorneys' fees, costs, or other expenses relating to  
5 this case, other than those set forth in the long form settlement agreement to be executed by the  
6 Parties. By Plaintiff's own admission, "[t]he intramural dispute between Plaintiff's predecessor  
7 and successor counsel may continue for months, and may or may not be the subject of separate  
8 legal proceedings." Dkt. 25 at 7:18-21. As Plaintiff further acknowledges, Mercer Island Law  
9 Group's lien was for an "amount of up to 45% of the gross recovery." Dkt. 25 at 3:21-25.  
10 Skidmore & Fomina, PLLC, however, has requested 35% of the settlement be allocated as  
11 attorneys' fees and costs. Dkt. 25-1 at 9. Plaintiff claims that Skidmore & Fomina and Mercer  
12 Island Law Group entered into a CR2A agreement on July 2, 2018, under which Skidmore &  
13 Fomina and Mercer Island Law Group agreed that the disputed attorneys' fee portion would be  
14 held in trust by the attorneys representing Skidmore & Fomina, pending the resolution of  
15 Plaintiff's counsel's fee dispute. Dkt. 25 at 5:1-9. Plaintiff, however, has never produced the  
16 CR2A agreement between Skidmore & Fomina and Mercer Island Law Group, leaving Boeing to  
17 wonder whether the total attorneys' fees sought by Skidmore & Fomina and Mercer Island Law  
18 Group is 35% or some other amount.

19 Plaintiff's claim that she unilaterally signed the long form settlement agreement one  
20 business day before Boeing filed its Motion to Enforce the Settlement Agreement is misleading  
21 given that Plaintiff made substantive modifications to the long form agreement. Specifically,  
22 Plaintiff removed language from the draft settlement agreement stating that Mercer Island Law  
23 Group's lien release would be a full and complete release by Mercer Island Law Group of any  
24 and all claims Mercer Island Law Group has, or might have, for attorney's fees, costs, or any  
25 other expenses relating to this action. Declaration of Nancy Villarreal ISO Motion to Enforce  
26 ("Villarreal Decl. ISO Motion to Enforce"), ¶ 9. This language was critical given that the Lien

1 Release Mercer Island Law Group filed was a conditional release, which stated that the “lien  
2 release is made pursuant to, and governed by, the terms of a binding CR2A Agreement dated  
3 July 2, 2018”—a CR2A Agreement Boeing has never seen. Dkt. 20.

4 Moreover, it is Plaintiff—not Boeing—who has imposed delays due to Plaintiff’s  
5 counsel’s inability to resolve their attorneys’ fee dispute. As discussed in Boeing’s moving  
6 papers, Plaintiff requested multiple trial continuances. Villarreal Decl. ISO Motion to Enforce,  
7 ¶ 6. First, Plaintiff requested a three-month continuance in order for her attorneys to resolve  
8 their attorneys’ fee dispute. *Id.* Three days later, Plaintiff requested the trial be delayed by six  
9 months so that her attorneys could resolve their fee dispute. Villarreal Decl. ISO Motion to  
10 Enforce, ¶ 7, Exh. F. When the parties subsequently conferred over Boeing’s Motion to Enforce  
11 Settlement, Plaintiff’s current counsel stated they might be willing to stipulate to Boeing’s  
12 instant motion and requested copies of Boeing’s yet-to-be-filed motion, only to later reverse  
13 course, make substantive unilateral changes to the draft long form settlement agreement, and  
14 oppose the instant motion. Moreover, Plaintiff flip-flopped on where she wanted the attorneys’  
15 fee portion to be deposited, creating further uncertainty and delay. First, Plaintiff asked the  
16 unascertained attorneys’ fees be deposited into the “court registry.” Villarreal Decl. ISO Motion  
17 to Enforce, ¶ 2, Exh. B. One month later, Plaintiff changed her mind and asked that the  
18 attorneys’ fees be sent to a different law firm, Smith & Hennessey PLLC. Villarreal Decl. ISO  
19 Motion to Enforce, ¶ 4, Exh. D. Plaintiff’s vacillation over the last several months has created  
20 uncertainty and delay and underscores the need for the Court to grant Boeing’s Motion to  
21 Enforce.

22 Boeing is not seeking to evade its obligations under the CR2A Agreement with Plaintiff.  
23 Rather, Boeing seeks clarity and an order from the Court fully and finally resolving the  
24 attorneys’ fee issue so that neither Plaintiff, Skidmore & Fomina nor Mercer Island Law Group  
25 can seek additional attorneys’ fees and costs from Boeing at some later date when said law firms  
26 finally resolve their dispute. Notably, Boeing’s Motion to Enforce should be granted given that

1 Mercer Island Law Group agrees with Boeing's [Proposed] Order. Villarreal Decl. ISO Motion  
2 to Enforce, ¶ 9.

3 Again, given the uncertainty regarding when the attorneys' fee dispute will be resolved  
4 between Skidmore & Fomina and Mercer Island Law Group, and to bring closure to this case,  
5 Boeing hereby requests the Court (1) issue an order enforcing the Parties' Settlement Agreement;  
6 (2) order Plaintiff to advise Boeing of the amount of the settlement to be designated as attorneys'  
7 fees within seven days of the Court's order; (3) order the Parties to finalize and execute a formal  
8 settlement agreement consistent with the Parties' Memorandum of Material Terms Subject to  
9 CR2A dated June 4, 2018 within fourteen days of the Court's order on Boeing Motion to  
10 Enforce; and (4) order that Boeing will not be held liable to Plaintiff, Mercer Island Law Group,  
11 PLLC, or Skidmore & Fomina, PLLC, for any attorneys' fees, costs, or other expenses relating to  
12 this case, other than those set forth in the long form settlement agreement to be executed by the  
13 Parties within fourteen days of the Court's order.

14 Dated: September 14, 2018

OGLETREE, DEAKINS, NASH, SMOAK & STEWART,  
15 P.C.

16 /s/ Laurence A. Shapero

17 Laurence A. Shapero, WSBA #31301  
18 1201 Third Avenue, Suite 5150  
19 Seattle, WA 98101  
20 Phone: 206-876-5301  
21 Fax: 206-693-7058  
22 Email: Laurence.shapero@ogletree.com

23 By: /s/ Nancy Villarreal

24 Clifford D. Sethness, WSBA #14110  
25 Nancy Villarreal (admitted *pro hac vice*)  
26 Morgan, Lewis & Bockius LLP  
300 South Grand Avenue, 22<sup>nd</sup> Floor  
Los Angeles, CA 90071-3132  
Telephone: (213)612-2500  
Facsimile: (213)612-2501  
Email: clifford.sethness@morganlewis.com  
nancy.villarreal@morganlewis.com

*Attorneys for Defendant*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2018, I electronically filed the foregoing document with the clerk of the U.S. District Court for the Western District of Washington at Seattle using the electronic case filing system of the court.

  
\_\_\_\_\_  
Monet R.A. Torres

DB2/ 34477584.2